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12 **HARRACH LAW**

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on behalf of Wesco Insurance Company and
Technology Insurance Company Inc.*

18 **UNITED STATES BANKRUPTCY COURT**

19 **DISTRICT OF ARIZONA**

20 In re:

21 **DELTA MECHANICAL INC.; NEVADA**

22 **DELTA MECHANICAL, INC.; CD**

23 **PLUMBING INC.; ARIZONA DELTA**

24 **MECHANICAL, INC.; CALIFORNIA DELTA**

25 **MECHANICAL, INC.; GEORGIA DELTA**

26 **MECHANICAL, INC.; NEW MEXICO**

27 **DELTA MECHANICAL, INC.; COLORADO**

28 **DELTA MECHANICAL INC.; CAROLINA**

29 **DELTA MECHANICAL, INC.; MICHIGAN**

30 **DELTA MECHANICAL, INC.; FLORIDA**

31 **DELTA MECHANICAL, INC.; TEXAS DMI,**

32 **INC.; and DELTA MECHANICAL, INC.,**

33 Debtors.

34 **THIS FILING APPLIES TO:**

35 All Debtors

36 Specified Debtors

37 Case No. 2:15-bk-13316-GBN

38 Chapter 11

39 JOINTLY ADMINISTERED WITH:

40 2-15-bk-13316 2-15-bk-13327

41 2-15-bk-13328 2-15-bk-13330

42 2-15-bk-13331 2-15-bk-13332

43 2-15-bk-13334 2-15-bk-13335

44 2-15-bk-13336 2-15-bk-13338

45 2-15-bk-13339 2-15-bk-13341

46 2-15-bk-13342

47 **STIPULATION FOR ALLOWANCE OF
GENERAL UNSECURED CLAIM**

1 The above-captioned Reorganized Debtors (defined below) and AmTrust North America,
2 on behalf of Wesco Insurance Company and Technology Insurance Company (collectively
3 “**AmTrust**” and with the Reorganized Debtors, the “**Parties**”), hereby stipulate and agree as
4 follows:

5 **I. RECITALS**

6 1. The Debtors initiated their bankruptcy cases on October 19, 2015 by filing
7 petitions for relief under Chapter 11 of the United States Bankruptcy Code.

8 2. AmTrust issued a worker’s compensation policy (the “**Policy**”) (ending in 4467)
9 to Debtor California Delta Mechanical Inc. (“**California Delta**”) that was in effect from June 2,
10 2014 through June 2, 2015 (the “**California Policy**”).

11 3. The premiums paid on the California Policy were subject to adjustment based
12 upon audit results to determine the actual number of employees and total payroll covered under
13 the California Policy during its effective period.

14 4. AmTrust filed an original proof of claim (the “**Amtrust Claim**”) [Claim No. 52]
15 on or about February 8, 2016 in the bankruptcy cases based upon an original audit of the
16 California Policy. The original audit indicated that California Delta owed an additional \$79,484
17 in premiums under the California Policy.

18 5. A second audit was conducted of the California Policy, which indicated that the
19 payroll for California Delta was 1005% higher than had been originally estimated. The second
20 audit indicated an additional premium liability was owed under the California Policy. AmTrust
21 amended the amount of the AmTrust Claim on November 16, 2016 to \$494,000 to account for

1 the results of the Second Audit.

2 6. AmTrust also issued a worker's compensation policy (ending in 9652) to Debtor
3 Nevada Delta Mechanical Inc. ("Nevada Delta"), that was in effect from 2013 through 2014
4 (the "Nevada Policy"). A final audit of the Nevada Policy reflected a balance that Nevada Delta
5 owed to AmTrust of \$25,198.

6 7. AmTrust also issued a worker's compensation policy (ending in 0362) to Debtor
7 Florida Delta Mechanical Inc. ("Florida Delta") that was in effect from December 2013 through
8 December 2014 (the "Florida Policy"). A final audit of the Florida Policy reflected a balance
9 that Florida Delta owed to AmTrust of \$25,198.

10 8. On April 25, 2017, AmTrust again amended the AmTrust Claim to indicate a total
11 liability owing under the California Policy, the Nevada Policy, and the Florida Policy of
12 \$603,164.

13 9. On June 15, 2018, the Reorganized Debtors filed an objection to the April 25,
14 2017 amended AmTrust Claim (the "Objection") [DE 1316].

15 10. On January 31, 2018, this Court, entered an order (the "Confirmation Order")
16 [DE 1192] confirming the *First Amended Joint Plan of Reorganization Dated June 2, 2017* (the
17 "Plan") [DE 864].

18 11. The Plan provided for the reorganization of California Delta, Nevada Delta, and
19 Florida Delta and other related entities (the "Reorganized Debtors").

20 12. The Plan became effective on January 31, 2018 (the "Effective Date").

21 13. Unsecured Claims were treated in Class 11 of the Plan pursuant to the (a)

1 Confirmation Order, and (b) the *Stipulation in Aid of Confirmation Among Plan Proponents,*
2 *Plan Debtors, and Official Committee of Unsecured Creditors* (the “**Committee Stipulation**”
3 and with the Plan and the Confirmation Order, the “**Plan Documents**”) [DE 1189].

4 14. The Plan and the Confirmation Order provided that no distribution would be made
5 on account of an unsecured claim that was subject to an unresolved objection (“**Disputed**
6 **Claims**”). The AmTrust Claim was a Disputed Claim. The Plan provided for reserves to be
7 established to pay Disputed Claims pending their allowance in whole or part. *See* Plan at §
8 VII.D.

9 15. The Confirmation Order at ¶ 22(d) required that distributions to unsecured
10 creditors holding allowed claims be set forth in distribution notices to be filed with the Court
11 (the “**Distribution Notices**”). The Distribution Notices also described the amounts reserved to
12 pay Disputed Claims pending their allowance.

13 16. Distribution Notices were filed with the Court [DE 1442, 1488, 1522, and 1538].
14 The June 25, 2019 Distribution Notice [DE 1538] indicated that a cumulative reserve of
15 \$22,892.37 had been reserved to pay the AmTrust Claim based upon its asserted and disputed
16 amount of \$603,164.

17 17. The Parties enter into this Stipulation to fully and finally resolve all of AmTrust’s
18 claims in the bankruptcy cases. The Parties desire to resolve their disputes on the terms and
19 conditions set forth in this Stipulation to avoid litigation risks and expenses.

20 **II. STIPULATION**

21 18. The Recitals set forth above are true and correct and are incorporated herein by

1 this reference without any distinction or difference.

2 19. AmTrust shall have an allowed general unsecured prepetition claim in the amount
3 of \$450,000 (the “**Allowed AmTrust Claim**”) payable in accordance with the Plan Documents.

4 20. None of the Debtors, the Reorganized Debtors, their bankruptcy estates, and/or
5 their property shall be liable to AmTrust for any liability occurring on or before the Effective
6 Date on account of the three policies that comprise AmTrust Claim as amended; or on account
7 of any other policy or on account of any other claim against the bankruptcy estates of the
8 Debtors or Reorganized Debtors arising on or before the Effective Date. Except with respect to
9 distributions to be made on account of the Allowed AmTrust Claim as provided in this
10 Agreement, AmTrust shall not receive any other distribution under the Plan Documents.
11 AmTrust shall be unconditionally and irrevocably subject to and bound by the release,
12 discharge, and injunction provisions contained in the Plan Documents.

13 21. The Reorganized Debtors shall distribute to AmTrust on the next distribution date
14 an amount equal to the cumulative sum that AmTrust would have received on the prior
15 distribution dates had its claim been allowed in the amount of \$450,000 on the Effective Date,
16 plus a regular pro rata payment as required under the Plan Documents based upon an allowed
17 claim of \$450,000.

18 22. The Parties shall be deemed to have drafted this Stipulation, and the rule of law
19 that any ambiguity shall be construed against the drafting party shall not apply to this
20 Stipulation.

21 23. This Stipulation binds and inures to the benefit of the Parties and their successors

1 and assigns.

2 24. The Parties shall pay their own respective attorneys' fees and costs.

3 25. The Bankruptcy Court shall have exclusive jurisdiction to enter a final order or
4 judgment determining any dispute related to this Stipulation.

5 26. No further notice or hearing related to this Stipulation is required pursuant to
6 §VII.C of the Plan. In an abundance of caution, however, this Stipulation has been noticed
7 pursuant to Local Bankruptcy Rule 9013-1. If no objection to the Stipulation is timely filed, then
8 pursuant to Local Bankruptcy 9013-1 a form of order approving the Stipulation will be lodged
9 with the Court for entry.

10 WHEREFORE, the Parties request that the Court enter an order approving this
11 Stipulation.

12 DATED this 2nd day of July, 2019.

13 **SCHIAN WALKER, P.L.C.**

14 By /s/SCOTT GOLDBERG, #015082
15 Dale C. Schian
16 Scott Goldberg
17 *Attorneys for the Reorganized Debtors*

18 **HARRACH LAW**

19 By /s/SCOTT GOLDBERG, with permission of
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Technology Insurance Company Inc.*